

September 04, 1985

Mr. Michael Macchiaroli

Asst. Director Marketing and Compliance

Securities and Exchange Commission

450 5th Street N.W. Washington D.C. 20549

Dear Mr. Macchiaroli:

Mr. Joel Bolton of your office in Los Angeles suggested that we write to you for a written opinion concerning the following matter.

Under Regulation T 15C3-3 paragraph C sub 1 and 3 ie: Control of Securities "in the custody or control of a clearing corporation or other subsidiary organization of either national securities exchange ..." "are the subject of bona fide items of transfer"

Before addressing the actual questions requiring documentation and/or written opinions, we would like to inform you of the following facts concerning our company.

We, as the Pacific Depository and Trust Co., a subsidiary of the Pacific Stock Exchange, have numerous broker/dealers as participants, for whom we assume custody of securities deposited with us. Certain of these participants utilize our transfer services to accomplish transfers to be registered into their customers' names. Within our fiduciary capacity, we hold securities and produce a daily report of position and location, known as "Member Position and Cash".

When a transfer instruction is received, it is entered into our computer system as a Stage 1(one) or simply "request received". The transfer or group of transfer instructions are matched to our nominee stock (Pacific & Co.) and entered into the system as a Stage 2(two), "to transfer (agent)".

The questions, for which we need written documentation and/or written opinions are as follows:

1. Since we, as a recognized subsidiary of a national securities exchange, act in a fiduciary capacity as agent, in the transfer of securities for

broker/dealer participants, and since we as agent daily confirm the status of each individual transfer to the broker/dealer participant; need the broker/dealer participant report on Focus any transfer items confirmed by us, but aged 40 calendar days?

2. Occasionally, a transfer request will be returned to us for a variety of reasons. For example, no longer transfer agent or a questionable registration. Additionally, on occasion, a completed transfer will have a misspelling in the registration or some other minor fault necessitating its' return to the agent for correction and/or replacement.

Since the rejected transfer, or the security needing correction, has come back to us, do you see any reason, given the explanation of our staging processes above, that we should not restage the items back to a new stage II date "to transfer" to reflect the need for a reprocess of the transfer item?

3. Our established procedures, being in compliance with SEC and other regulatory bodies' rules concerning the issuance of tracers and the obtaining of responses from transfer agents, ensure us of very few aged transfer items.

We do, however, deal with Canadian issues frequently. In general these transfers are completed within a cycle of less than 40 calendar days. However, on occasion, due to the fact that these transfers are effected via international mail system, a very small percentage of our Canadian transfers will go past a 40 day period and we confirm via phone, if necessary, to insure transfer agent possession.

Two questions arise concerning these Canadian transfers.

a) We regularly do transfers with 10 Canadian transfer agents who utilize the Vancouver Stock Exchange envelope system, (much like the NTS System in New York), wherein a letter of transmittal is created, listing securities presented for transfer. This entire package for any and/or all of its agents is sent via Brinks to Vancouver and signed for by the Vancouver Stock Exchange. Since a signed receipt is obtained by Brinks, may we as the presenting agent consider such transfers as being bona fide in the context of Validation by the agent?

b) In respect to those Canadian Transfers effected by mail, does the SEC have any jurisdiction or agreement with a Canadian Commission or Provincial Canadian commissions, regarding transfer agent responsibilities to the presenter?

If so may we obtain a copy of such agreement or understanding and the name(s) and address(es) of the Canadian regulatory bodies?

If not, can you suggest contacts with whom we may pursue our questions concerning Canadian transfers?

We wish to thank you in advance for your attention and time in this matter. Should you have any questions concerning this letter please call the undersigned at (415) 393-7986.

Sincerely,

John Malin

July 29, 1986

Mr. John Malin

Pacific Securities Depository Trust Company

618 South Spring Street Los Angeles, California 90014

Dear Mr. Malin:

This is in response to your letter dated September 4, 1985, in which you request on behalf of the Pacific Securities Depository Trust Company ("PSDTC") an interpretation of the possession or control provisions of the Customer Protection Rule (17 CFR 240.15c3-3).

I understand the pertinent facts to be as follows: PSDTC is a wholly owned subsidiary of the Pacific Stock Exchange, Inc. and a registered clearing agency under the Securities Exchange Act of 1934.

The questions for which you have requested a written opinion will be restated and responded to in order:

Question #1: Can a broker-dealer's position report prepared by the PSDTC, which list all securities that have been sent to transfer by the clearing corporation pursuant to the instructions received from the broker-dealer, serve as the written statement that Rule 15c3-3(c)(3) requires broker-dealers to have for transfer items over 40 calendar days to be considered in the control of the broker-dealer?

Answer: The Division would recommend no action to the Commission if a broker-dealer relies on the position report prepared by PSDTC to serve as the written statement that broker-dealers are required to have for bona-fide transfer items aged over 40 calendar days pursuant to subparagraph (c)(3) of Rule 15c3-3. PSDTC must however have received, within the 40 calendar days period prescribed by the Rule, a confirmation or a revalidation of the window ticket from the transfer agent acknowledging the transfer instructions and the possession of the securities.

Question #2: Whether items that were sent to transfer by the PSDTC and returned to them as a rejected transfer or that came back from transfer and necessitated its return to the transfer agent for a correction would be considered an aged transfer item after 40 calendar days?

Answer: Once a security that was sent to transfer is physically returned to PSDTC for any of the reasons listed above, it is considered for purposes of Rule 15c3-3 to be back in the control of the clearing agent. Therefore, pursuant to Rule 15c3-3(c)(1) it would be considered to be in the possession of the clearing agent which is a good control location under the rule.

Moreover, if and once the item is sent back to the transfer agent, it would be considered a "bona fide item of transfer" under Rule 15c3-3(c)(3) and a new 40 calendar day period would start to run before it becomes an aged transfer item.

Question #3: PSDTC occasionally serves as agent for its member broker-dealers and sends items to transfer in Canada. Specifically, PSDTC regularly sends items for transfer to 10 Canadian transfer agents who utilize the Vancouver Stock Exchange envelope system (similar to the NTS system in New York). The items sent for transfer to these agents are usually delivered by Brinks to the Vancouver Stock Exchange with a letter of transmittal listing all the securities that are presented for transfer. The items for transfer are accepted and acknowledged by the Vancouver Stock Exchange at the time of delivery. You inquire whether the receipt that is

signed by the Vancouver Stock Exchange can serve as the written acknowledgement that is required by Rule 15c3-3(c)(3) for items in transfer over 40 calendar days to be considered to be in the control of the broker-dealer?

Answer: The receipt that is signed by the Vancouver Stock Exchange for items in transfer does not satisfy the requirements of Rule 15c3-3(c)(3). The written statement acknowledging the transfer instructions and the possession of the securities can only be acceptable for purposes of Rule 15c3-3(c)(3) when issued by the issuer or the transfer agent. An acknowledgement issued by any other party would not comply with the provisions of the Rule.

Question #4: You ask if the Securities and Exchange Commission has any jurisdiction or agreement with Canada or any of its Provinces with respect to transfer agents?

Answer: No, the Securities and Exchange Commission has no agreement with the government of Canada or any of its Provinces regarding transfer agents. If you have any questions concerning transfer agents in Canada I suggest you contact:

Mr. D.E. Allin

Assistant Secretary

Trust Companies Association of Canada

L' Association des Compagnes de

Fiducie des Canada

11 Adelaide Street West Suite 400 Toronto, Ontario M5H 1Z9

Tel (416) 364-1207

I hope this letter is responsive to your questions. Please contact us if we can be of further assistance.

Sincerely,

Antonio J. Santos Staff Attorney